

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

PHILIPS ELECTRONICS NORTH
AMERICA CORPORATION,

Plaintiff,

v.

MICHELLE K. LEE, in her official capacity
as Deputy Under Secretary of Commerce for
Intellectual Property and Deputy Director of
the United States Patent and Trademark
Office, serving in the acting capacity as
Director of the United States Patent and
Trademark Office, and

UNITED STATES PATENT AND
TRADEMARK OFFICE,

Defendants.

Civil Action No. 1:14-CV-1340 (LO/TRJ)

NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE

Please take notice that Masimo Corporation moves for leave to intervene in this case to file a case-dispositive motion, as well as a brief opposing Philips' case-dispositive motion, on January 19, 2015—the same date that the Defendants' papers are due. (D.I. 12.)

Philips filed this action challenging the United States Patent and Trademark Office's ("PTO") actions concerning Masimo's U.S. Patent No. 7,530,955 (the "'955 patent") without notifying Masimo. Then, without notifying Masimo, Philips and the PTO agreed that the PTO would delay issuing the reexamination certificate for Masimo's '955 patent until after a February 27, 2015 hearing scheduled in this action.

Therefore, Masimo has interests that are threatened by this action. Indeed, this action has already delayed Masimo's ability to assert the '955 patent in a concurrent litigation against Philips. Philips' action seeks to ultimately affect the PTO's decision regarding patentability of certain claims of the '955 patent—as well as the timing of that decision. Importantly, Masimo's interests cannot adequately be represented by Philips, which is Masimo's adversary, or the PTO, which is an administrative agency with no vested interest in whether and when Masimo receives its reexamination certificate.

Masimo brings this motion shortly after learning about this action, and Masimo's intervention would not affect the case schedule.

Masimo's motion is based on this notice, the concurrently filed memorandum, the declarations of Joseph Re and Brian Horne, including the exhibits attached thereto, any subsequently filed briefs, and any other arguments, evidence, and matters submitted to the Court, at the hearing or otherwise. Masimo is lodging a proposed order for the Court's consideration.

Respectfully submitted,

Dated: December 3, 2014

By: /s/ Andrea L. Cheek

Andrea L. Cheek (VBN 80,331)

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Counsel for Intervener
Masimo Corporation

CERTIFICATE OF SERVICE

I certify that on December 3, 2014, I will electronically file the foregoing **NOTICE OF MOTION AND MOTION FOR LEAVE TO INTERVENE** with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

Respectfully submitted,

Dated: December 3, 2014

By: /s/ Andrea L. Cheek

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